

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROPET USA, INC.,

Plaintiff,

v.

LLOYD SHUGART,

Defendant.

Case No. C06-0186 MAT

PRETRIAL ORDER

The parties, through their respective counsel, and pursuant to CR 16, hereby submit the following pretrial order.

FEDERAL JURISDICTION

Propet's action is brought pursuant to 17 U.S.C. § 101 *et seq.*, and 28 U.S.C. § 2201.

I. CLAIMS AND DEFENSES

Plaintiff Propet USA, Inc. will pursue at trial the following claims:

Propet seeks a declaratory judgment that Propet is licensed to use the photographs Propet paid for and to use them in all reasonable ways related to Propet's

1 business including the right to provide Shugart's photographs of Propet shoes to third party
2 users for the purpose of advertising Propet shoe products. Propet also seeks an injunction
3 prohibiting Shugart from selling or offering for sale any Propet photographs on E-bay;
4 prohibiting Shugart from transferring any right, title or interest in Propet's photographs to
5 third parties without advance written approval, and prohibiting Shugart from threatening
6 Propet's customers with copyright infringement actions.

7 As to Shugart's claims, Propet maintains that Shugart's claims are barred by his
8 failure to apply for and obtain copyright registrations in timely fashion, waiver, unclean
9 hands, and the statute of limitations. Propet also denies willful conduct of any kind and
10 denies that Shugart is entitled to attorney fees.

11 The Defendant Mr. Lloyd Shugart will pursue the following claims:

12 Propet has willfully infringed Mr. Shugart's copyrights in various images he
13 supplied to Propet. Propet has also violated Mr. Shugart's rights under the Digital Millennium
14 Copyright Act by, *inter alia*, removing Mr. Shugart's copyright notices from digital images
15 Mr. Shugart provided to Propet. Propet has unlawfully retained possession of, and refused to
16 return to Mr. Shugart original images provided by Mr. Shugart to Propet. Mr. Shugart seeks
17 damages, including but not limited to those available under 17 U.S.C. § 504, § 1203, and
18 § 1202 *et seq.* Mr. Shugart also seeks the return of all his original images (*i.e.*, films,
19 negatives, CDs containing electronic images, etc.) or, monetary damages for Propet's failure
20 to return such materials. Mr. Shugart also seeks an injunction enjoining Propet from directly
21 or indirectly infringing Shugart's rights in his images, including without limitation the
22 displaying of the images in catalogues or websites, distributing any of Mr. Shugart's images,
23 or encouraging third parties to make use of Mr. Shugart's images. Mr. Shugart seeks his
24 reasonable attorneys fees.

1 **II. NONDISPUTED FACTS**

2 1. Propet sells and distributes Propet brand shoes throughout the United
3 States. Propet advertises its shoes in various media outlets that require photographs.

4 2. From 1999-2005 Propet regularly had Shugart take photographs.

5 3. Shugart invoiced Propet for his services on a per-project basis.

6 4. From 2003-2005, Propet paid Shugart in excess of \$100,000. All
7 Shugart invoices were paid.

8 **III. FACTUAL CONTENTIONS**

9 Propet U.S.A., Inc. contends as follows:

10 1. Shugart's claimed film delivery memo was never authorized or agreed
11 to by Propet.

12 2. Shugart's film delivery memo was not provided to Propet on either all
13 or substantially all of the deliveries of film.

14 3. In 2005, Propet terminated its relationship with Shugart.

15 4. Shugart never complained to Propet about how Propet was using his
16 photographs until after the relationship was terminated.

17 5. In January 2006, Shugart informed Propet that he was offering to sell
18 on E-bay photographs of Propet shoes. He offered to sell the shoe photographs for
19 \$1,300,000.

20 6. On January 25, 2006, Shugart demanded Propet pay a sum of money or
21 he would retain an attorney and bring suit.

22 7. No written agreement was entered into between the parties.

23 Mr. Shugart contends as follows:

24 8. Mr. Shugart provided a Film Delivery Memo with all invoices sent to
25 Propet.

1 9. Mr. Shugart sealed each set of film delivered to Propet with a seal
2 giving notice of the Film Delivery Memo.

3 10. Propet was aware of and accepted the terms of the Film Delivery
4 Memo.

5 11. Under the terms of its agreement Propet could only use Mr. Shugart's
6 images for a maximum period of 2 years following delivery.

7 12. Under the terms of its agreement with Mr. Shugart, Propet was not
8 authorized to permit others to use Mr. Shugart's images.

9 13. Under the terms of its agreement with Mr. Shugart, Propet was not
10 authorized to use Mr. Shugart's images outside the United States.

11 14. Propet has violated the terms of its agreement with Mr. Shugart, *inter*
12 *alia*, using Mr. Shugart's images for more than 2 years following delivery, permitting others
13 to use Mr. Shugart's images, and using Mr. Shugart's images outside the United States.

14 15. Under the terms of its agreement with Mr. Shugart, Propet was and
15 remains obligated to return to Mr. Shugart all original images (*i.e.*, negatives, etc.) provided
16 by Mr. Shugart to Propet.

17 16. Propet has violated its obligations to Mr. Shugart by failing to return all
18 such images to Mr. Shugart despite Mr. Shugart's demand that Propet do so.

19 17. Mr. Shugart provided certain of his images to Propet in electronic form
20 wherein Mr. Shugart's notice of his copyright ownership was electronically embedded.

21 18. Propet violated Mr. Shugart's rights under 17 U.S.C. § 2202 by, *inter*
22 *alia*, removing from such images Mr. Shugart's notice of copyright ownership.

23 19. Mr. Shugart has registered his copyright in the subject images with the
24 United States Copyright Office.

1 20. Mr. Shugart has been damaged by, *inter alia*, Propet's failure to honor
2 its obligations under its agreement with Mr. Shugart, its willful infringement of Mr. Shugart's
3 copyright rights, and its failure to return Mr. Shugart's images following such demand.

4 21. Propet has enjoyed substantial profits as a result of its willful
5 infringement of Mr. Shugart's copyrights.

6 22. A written agreement was entered into between the parties.

7 **IV. ISSUES OF LAW**

8 The following are issues of law to be determined by the court:

9 Propet USA, Inc. contends the issue of law are:

10 23. Whether a declaratory judgment should issue granting Propet an
11 unlimited nonexclusive license to use the Propet shoe photographs in any reasonable business
12 way.

13 24. Whether an injunction should issue enjoining Shugart from selling or
14 offering for sale any Propet photographs on e-Bay; transferring any right, title or interest in
15 Propet's photographs to third parties without advance written approval, and threatening
16 Propet's customers with copyright infringement actions.

17 25. Whether Shugart's claims are barred by the doctrines of estoppel,
18 waiver, unclean hands, unjust enrichment and the statute of limitations.

19 26. Whether Shugart's claims are limited because of his failure to register
20 copyrights.

21 27. Whether Shugart is entitled to attorney fees.

22 Mr. Shugart contends the issues of law are:

23 28. Whether Mr. Shugart is entitled to his actual damages and any
24 additional profits of Propet attributable to Propet's infringements of Mr. Shugart's copyright as
25 provided by 17 U.S.C. § 504(a) and (b).

1 3. Jon A. Payne, lawyer, c/o Carney Badley Spellman, P.S., 701 Fifth
2 Avenue, Suite 3600, Seattle Washington. May testify about materials related to the
3 photographs.

4 4. Bruce Danielson, lawyer, 1001 4th Ave. Suite 3200, Seattle, WA.
5 98154. Will testify about Shugart's credibility.

6 5. Ken Vensell, c/o Miller Nash LLP, 601 Union Street, Seattle, WA
7 98101. Mr. Vensell is a photographer and will testify in response to Mr. Shugart's
8 identification of photographs that allegedly infringe.

9 (b) On behalf of Mr. Shugart:

10 6. Lloyd Shugart, c/o Mann Law Group, 1420 Fifth Avenue, Suite 2200,
11 Seattle, Washington 98101. Mr. Shugart will testify concerning the creation images, the
12 subsequent use of the images by Propet, and his relationship with Propet.

13 7. Jon A. Payne, Carney Badley Spellman, P.S., 701 Fifth Avenue, Suite
14 3600, Seattle, Washington 98104. Mr. Payne may testify as to the open condition of the film
15 delivery box when it was returned to him by Propet.

16 8. Ken Johnson, Propet USA, 25612 74th Avenue So., Kent, Washington
17 98032. Mr. Johnson may testify concerning images created by Mr. Shugart, the subsequent
18 use of the images by Propet, and Mr. Shugart's relationship with Propet.

19 9. Bruce Kaser, Vantage Law PLLC, 355 NW Gilman Blvd., Suite 203,
20 Issaquah, Washington 98027. Mr. Kaser may testify concerning the relationship between
21 Mr. Shugart and Propet.

22 10. Jack Hawkins, c/o Miller Nash, 4400 Two Union Square, 601 Union
23 Street, Seattle, Washington 98101. Mr. Jack Hawkins may testify regarding general
24 knowledge of Propet's business operations and use of Mr. Shugart's copyrighted images.

25 11. Ken Vensell, c/o Miller Nash LLP, 601 Union Street, Seattle, WA 98101.
26 Mr. Vensell is a photographer and will testify in response to Mr. Shugart's identification of

1 photographs that allegedly infringe. Propet identified Mr. Vensell to its witness list for the
2 first time on September 13, 2007. Mr. Shugart objects to Mr. Vensell as a witness given the
3 untimely disclosure; however, if the court deems Mr. Vensell a valid witness, Mr. Shugart
4 reserves the right to call Mr. Vensell as a witness.

5 **VII. EXHIBITS**

6 (a) Admissibility stipulated:

7 Plaintiffs' Exhibits:

- 8 1. Propet Advertisement - Prop-000004-000006
- 9 2. Fax: Propet Invoice 1/30/2006 - Prop-000011
- 10 3. Shugart Invoice 5/11/2005-5/14/2005 - Prop-000012-000014
- 11 4. Shugart Invoice and Emails 7/20/2004 - Prop-000015-000036
- 12 5. Heffner Management Quick Report - Prop-000037-000063
- 13 6. Seattle Models Guild Model Release Materials - Prop-000064-000075
- 14 7. Invoice History Report - Prop-000076-000080
- 15 8. Propet U.S.A., Inc. Invoices - Prop-000081-000114
- 16 9. Email: Lloyd Shugart to Bruce Kaser - Prop-000181-000182
- 17 10. Copies of shoe photographs
- 18 11. Film Delivery Memo (Exhibit 2 to Shugart Deposition)
- 19 12. Invoice 7/12/00 (Exhibit 3 to Shugart Deposition)
- 20 13. Invoice 2/2/01 (Exhibit 4 to Shugart Deposition)
- 21 14. Invoice 6/25/01 (Exhibit 5 to Shugart Deposition)
- 22 15. Invoice 6/7/05 (Exhibit 6 to Shugart Deposition)
- 23 16. Email Ken Johnson Lloyd Shugart 6/15/05 (Exhibit 8 to Shugart
24 Deposition)

1 Defendant's Exhibits:

2 17. 5/13/05 email from Ken Johnson to Lloyd Shugart re: Project Directive
3 (Shugart Initial Disclosures Ex. 16, Pages 1-3)

4 (b) Authenticity stipulated, admissibility disputed:

5 Plaintiff's Exhibits:

6
7 Defendants Exhibits:

8
9 (c) Authenticity and admissibility disputed:

10 Plaintiff's Exhibits:

11
12 Defendants Exhibits:

13 18. Brochure: Retailer Support Program (Shugart Initial Disclosures
14 Exh. 1)

15 19. Brochure: 2002 Instock Catalog-Men/Women (Shugart Initial
16 Disclosures Exh. 2)

17 20. Brochure: Spring 2003 Catalog Supplement (Shugart Initial
18 Disclosures Exh. 3)

19 21. Brochure: Men's 2003 Instock Catalog/Women's 2003 Instock Catalog
20 (Shugart Initial Disclosures Exh. 4)

21 22. Brochure: 2004 Men's Instock Catalog/2004 Women's Instock Catalog
22 (Shugart Initial Disclosures Exh. 5)

23 23. Brochure: Spring 2005 Collection, 7/12/04 Shot #204096 and insert
24 (Shugart Initial Disclosures Exh. 6)

25 24. Brochure: 2005 Instock Catalog (Heffner models) (Shugart Initial
26 Disclosures Exh. 7)

- 1 25. Brochure: 2005 Medicare Accepted Section (Shugart Initial
2 Disclosures Exh. 8)
- 3 26. Poster Sized Prints of Images (Shugart Initial Disclosures Exh. 9)
- 4 27. Film delivery notice/seal (Shugart Initial Disclosures Exh. 10)
- 5 28. 7/21/00 Invoice to CPF Marketing (Shugart Initial Disclosures Exh. 12,
6 Page 66)
- 7 29. Invoices to Propet Shoes (Shugart Initial Disclosures Exh. 12, Pages
8 45-58, 60-63)
- 9 30. Dramatic Artists Agency vouchers and invoices (Shugart Initial
10 Disclosures Exh. 13)
- 11 31. CPF Job Form (Shugart Initial Disclosures Exh. 14)
- 12 32. Photographs of shoes from Ken Johnson advising use of images at
13 tradeshow (Shugart Initial Disclosures Exh. 15)
- 14 33. 5/11/05 email from Lloyd Shugart to Ken Johnson re: Catalog 06
15 Estimates (Shugart Initial Disclosures Exh. 17, Pages 1-4)
- 16 34. 5/16/05 email from Ken Johnson to Lloyd Shugart re: Revised
17 Estimates (Shugart Initial Disclosures Exh. 17, Pages 9-10)
- 18 35. 6/2/05 email from Ken Johnson to Lloyd Shugart re: Tradeshow
19 Photography (Shugart Initial Disclosures Exh. 17, Pages 11-13)
- 20 36. 6/6/05 email from Ken Johnson to Lloyd Shugart re: Spring 06 Bid
21 Request (Shugart Initial Disclosures Exh. 17, Pages 14-16)
- 22 37. Emails re: DAA – Propet invoices/vouchers for 2002 (Shugart Initial
23 Disclosures Exh. 17, Pages 21-30)
- 24 38. Copyright registrations (Declaration of Shugart in Opposition to
25 Propet's Motion for Summary Judgment Exh. B)
- 26

- 1 39. Copyrighted images (Shugart Answer and Counterclaim Exh. A, and
2 physical exhibits)
- 3 40. Samples of current infringements (Declaration of Shugart in Opposition
4 to Propet's Motion for Summary Judgment Exh. C, and physical exhibits)
- 5 41. Email from Lloyd Shugart to SMG Models re: Propet Update (LS
6 000106-109)
- 7 42. Film Delivery Boxes [returned to Mr. Shugart's Counsel by Propet]
8 (Physical exhibits)
- 9 42.1 Film Delivery Box without images – "Stan Sagers Pit"
- 10 42.2 Film Delivery Box containing images – "Fall 2002"
- 11 42.3 Film Delivery Box containing images
- 12 42.4 Film Delivery Box containing images – "Jan 2004 Lifestyle"
- 13 43. Original Film Images returned to Mr. Shugart's Counsel by Propet
14 (Physical Exhibits)
- 15 43.1 Ivey Serigth box containing images
- 16 43.2 Envelope - "4x5 P&D's"
- 17 43.3 Envelope - "Posters & Dura Frans"
- 18 43.4 Envelope - "04 Catalog"
- 19 43.5 Envelope - "16, 120 Missing A, 7, 13 Roche"
- 20 43.6 Envelope – "17, 120 Roche"
- 21 43.7 Envelope – "18, 120 Roche"
- 22 43.8 Envelope – "19, 120 Missing Roche"
- 23 43.9 Envelope – "21, 120 Missing #4 Roche"
- 24 43.10 Envelope – "220, 13, Missing 13, 15, 16, 19-38 Roche"
- 25 43.11 Envelope – "220, 12 Missing #18 Roche"
- 26 43.12 Envelope – "220, 11, #1 Roche"

- 1 43.13 Envelope – "22, 120 Missing Roche"
- 2 43.14 Envelope – "23, 120 Missing Roche"
- 3 43.15 Envelope – "20, 120 Missing 4, 6, 7 Roche"
- 4 43.16 Envelope – "220, 15 Missing #36 Roche"
- 5 43.17 Envelope – "220, 14 Missing 1-18 Roche"
- 6 43.18 Sheet of 20 images
- 7 43.19 Sheet of 20 images
- 8 43.20 Sheet of 15 images
- 9 43.21 Sheet of 20 images
- 10 43.22 Sheet of 1 image
- 11 43.23 Sheet of 4 images
- 12 44. Film envelope from Ivey Digital and Photo Imaging (Physical Exhibits)
- 13 45. Propet USA website (www.propetusa.com <<http://propetusa.com>>)
- 14 46. Copyright applications filed with the U.S .Copyright Office (Physical
- 15 Exhibits)
- 16 47. Images associated with Mr. Shugart's copyright applications filed the
- 17 U.S. Copyright Office (Physical Exhibits)
- 18 48. Box containing original film images, delivery boxes and envelopes
- 19 returned to Mr. Shugart by Propet (Physical Exhibits)
- 20 48.1 Film Delivery Box containing images – "To Color One, From Studio
- 21 413, Film for Scans for Propet, Advertorial"
- 22 48.2 Film Delivery Box with images – "Propet no scan"
- 23 48.3 Ivey box containing images – "invoice 204095"
- 24 48.4 Ivey box containing images – "invoice 204099 7/20/04"
- 25 48.5 Images and cardstock – "Footwear news, Propet footwear news, Propet
- 26 posters & durtuatis, Propet Lincoln Park, Propet @ Lincoln Park."

- 1 48.6 Bag containing images in Photobition Seattle and Color One sleeves.
- 2 48.7 Box from Color One containing images – "Transp,. Enclosed (7)"
- 3 48.8 Box from Color One containing images – "Original Transp. Propet"
- 4 48.9 Envelope from Photobition Seattle containing images – "Work order
- 5 358247"
- 6 48.10 Envelope from Photobition containing images – "Work order #390048"
- 7 48.11 Envelope from Photobition Seattle containing images – "Work order
- 8 #359478
- 9 48.12 Envelope from Color One containing images – "Propet Duratrans,
- 10 Propet @ Lincoln Park"
- 11 48.13 Envelope from Color One containing images – "Jan 2003, 5 original
- 12 transpariencies, Ken Johnson, Propet"
- 13 48.14 Envelope from Color One containing images addressed to Ken
- 14 Johnson, Propet.
- 15 48.15 Envelope from Colour Scan TXS containing images and Film Delivery
- 16 Memo.
- 17 48.16 Envelope containing images – "4x5 Poster & Duratrans"
- 18 48.17 Envelope containing images
- 19 48.18 Envelope from Emerald City Graphics – "Scans – 2 transp. enclosed,
- 20 Propet Job #20929.
- 21 48.19 Envelope containing images – "05 Advertorian"
- 22 48.20 Envelope containing images – "Roche Harbor"
- 23 48.21 Envelope containing images – "done 2 more for 30x40"
- 24 48.22 Envelope containing images – "Done – medium format, originals
- 25 scanned"
- 26 48.23 Envelope containing images – "Color One RGB Scan"

- 1 48.24 Envelope without images – "Washing Machine Photos 11/04"
- 2 48.25 Envelope from Color One without images – "Propet 5 Transp.
- 3 Enclosed"
- 4 48.26 Envelope without images – "Downtown condo, Michelle, I-H Missing 4-
- 5 15
- 6 48.27 CD envelope without CD – "Studio 413"
- 7 48.28 Large Ivey Seright envelope containing images – "Propet @ Seattle
- 8 WaterFront"
- 9 48.29 Large Ivey Seright envelope containing images – "Propet/Marina
- 10 Walker @ Elliot Bay Marina"
- 11 48.30 Large Ivey Seright envelope containing images – "Propet Rain Walker
- 12 @ Pioneer Square"
- 13 48.31 Large white envelope containing images – "Original Art/TXs enclosed,
- 14 2003 Catalog Photos"
- 15 48.32 Large Ivey Seright envelope containing images – "Propet trade show
- 16 1/5/03 @ U-Village"
- 17 48.33 Large Ivey Seright envelope containing images – "Propet @ UW
- 18 Arboritum"
- 19 48.34 Large Photobition Seattle envelope containing images – "Propet @
- 20 Belltown Condo"
- 21 48.35 Large white envelope containing images – "Propet Catalog @ Vashion,
- 22 2004 Catalog, L/S photos"
- 23 48.36 Large Photobition Seattle envelope containing images – "Propet @
- 24 Ballard locks, @ Shilshole Bay, @ Golden Gardens"
- 25 48.37 Large Ivey Seright envelope containing images – "Propet Tradeshow
- 26 WSA 7/303 @ Madison Park, @ Stan Sager"

- 1 48.38 loose sheets of images
- 2 48.39 Envelope containing images – "1-20 MB scan del. by FTP for ad"
- 3 49. Mr. Shugart's First and Second Set of Interrogatories and Requests for
- 4 Production of Documents to Plaintiff And Answers Thereto dated 5/10/06 and 5/14/07
- 5 respectively (physical exhibits)
- 6 50. Propet's Pre-Trial Statement dated 8/15/07 (physical exhibit)
- 7 51. Email: Ken Johnson to Andrew Burkhardt (Prop 000001-000003)
- 8 52. Email: Ken Johnson to Andrew Burkhardt (Prop 000007-000008)
- 9 53. Email: Andrew Burkhardt to Ken Johnson (Prop 000186)
- 10 54. Email: Ken Johnson to Andrew Burkhardt (Prop 000187-000188)
- 11 55. Article: Photography; Risks Pay off for Studio 412 (Prop 000190)
- 12 56. Email: Ken Johnson to Andrew Burkhardt (Prop 000197-000200)
- 13 57. Declaration of Jon Payne in Opposition to Propet's Motion for
- 14 Summary Judgment (Filed 4/2/07, Docket #62).
- 15 58. Invoice History Report (Prop 000115-000175)
- 16 59. Propet Seattle Models Guild Bill (Prop 000176-000180)
- 17 60. Email: Bruce Kaser to Lloyd Shugart (Prop 000183-000185)
- 18 61. Email: Bruce Kaser to Lloyd Shugart (Prop 000189)
- 19 62. Email: Bruce Kaser to Lloyd Shugart (Prop 000191-000194)
- 20 63. Email: Bruce Kaser to Lloyd Shugart (Prop 000195)
- 21 64. Email: Bruce Kaser to Lloyd Shugart (Prop 000196)

22 **VIII. ACTION BY COURT**

- 23 A. This case is scheduled for trial before a jury on September 24, 2007.
- 24 B. Trial briefs shall be submitted to the court on or before September 17,
- 25 2007.
- 26

1 C. Jury instructions requested by either party shall be submitted on or
2 before September 17, 2007. Suggested questions of either party to be asked of the jury by the
3 court on voir dire shall be submitted to the court on or before September 17, 2007.

4 This order has been approved by the parties as evidenced by the signatures of
5 their counsel. This order shall control the subsequent course of the action unless modified by
6 a subsequent order. This order shall not be amended except by order of the court pursuant to
7 agreement of the parties or to prevent manifest injustice.

8 DATED this ____ day of _____, 2007.

9
10 _____
11 Honorable Mary Alice Theiler
Magistrate Judge

12 FORM APPROVED

13 MILLER NASH LLP

14
15 /s/ James L. Phillips
James L. Phillips
WSB No. 13186
16 Fax: (206) 622-7485
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17 (206) 622-8484

18 Attorney for Plaintiff Propet USA, Inc.

19
20 /s/ Philip P. Mann
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24 Attorneys for Defendant
25 Lloyd Shugart

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John Whitaker
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(206) 319-1575

1 I hereby certify that on this 14th day of September, 2007, I caused the foregoing
2 PRETRIAL ORDER to be sent via electronic mail to:

3
4 Honorable Mary Alice Theiler
5 U.S. Magistrate Judge
6 United States District Court
7 Western District of Washington
8 U.S. Courthouse
9 700 Stewart Street
10 Seattle, Washington 98101
11 E-Mail: theilerorders@wawd.uscourts.gov

12 And to:

13 Philip P. Mann
14 MANN LAW GROUP
15 1420 Fifth Avenue, Suite 2200
16 Seattle, Washington 98101
17 (206) 274-5100
18 mannlaw@comcast.net
19 phil@mannlawgroup.com
20 eryl@mannlawgroup.com

21 John Whitaker
22 WHITAKER LAW GROUP
23 755 Winslow Way East, Suite 304
24 Bainbridge Island, WA 98110
25 john@wlawgrp.com
26 (206) 319-1575

27 I hereby certify that on this same date, I electronically filed the PRETRIAL
28 ORDER with the Clerk of the Court using the CM/ECF system.

29 Executed at Seattle, Washington, this 14th day of September, 2007.

30 /s/ James L. Phillips

31 James L. Phillips, WSB No. 13186
32 MILLER NASH LLP
33 Email: jim.phillips@millernash.com

34 Attorneys for Plaintiff
35 Propet USA, Inc.